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No. 71-473

In the Supreme Court of the United States

OCTOBER TERM, 1971

MARTIN S. WEG, D.D.S., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner invoked the Fifth Amendment privilege against compulsory self-incrimination before a federal grand jury in Los Angeles which had ordered him to appear with his dental records covering the period of time he had known one Dr. Bender. He was thereafter ordered by the district court, on application of the United States Attorney, to testify pursuant to a grant of immunity under 18 U.S.C. 6002, 6003 (Pet. App. B). These statutory provisions, part of the Organized Crime Control Act of 1970, afford a witness immunity from use in a criminal case of any testimony he furnishes or any leads therefrom. Thereafter petitioner appeared before the grand jury and again invoked his Fifth Amendment privilege. He was brought

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before the judge, where he expressly reiterated his refusal to obey the court's order that he testify. Petitioner was adjudicated in civil contempt but execution of the sentence was suspended pending appeal. On appeal the court of appeals affirmed the civil contempt adjudication on the authority of its previous decisions including *Kastigar and Stewart* v. *United States*, 440 F. 2d 954 (C.A. 9). The court stayed its mandate pending the disposition of the instant petition for a writ of certiorari (Pet. App. A).

The issue raised by petitioner—whether the use-immunity afforded by 18 U.S.C. 6002 is coextensive with the protection afforded by the Fifth Amendment privilege against compelled self-incrimination—is before this Court in *Kastigar and Stewart*, No. 70–117, this Term, certiorari granted on May 17, 1971. Accordingly, it would seem appropriate to defer disposition of this case until after *Kastigar and Stewart* is decided.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1971.